

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

IVAN VON STAICH,

Petitioner,

v.

US PAROLE COMMISSIONER,

Respondent.

Case No. 1:21-cv-00628-HBK

ORDER DENYING PETITIONER'S
APPOINTMENT OF COUNSEL

(Doc. No. 23)

ORDER FINDING PETITIONER'S
REQUEST FOR JUDICIAL NOTICE MOOT

(Doc. No. 24)

Before the Court are Petitioner's motion for appointment of counsel and request for judicial notice. (Doc. No. 23, 24). Petitioner filed a *pro se* Petition for Writ of Mandamus seeking relief pursuant to 28 U.S.C. § 1651. (Doc. No. 1). Petitioner notes that he was appointed counsel to represent him in his parole revocation proceedings, and requests that the Court "extend" that appointment of counsel to the instant matter. (Doc. No. 23).

Regardless of the appointment of counsel in Plaintiff's criminal matter, there is no automatic, constitutional right to counsel in this separate federal habeas proceeding. *See Coleman v. Thompson*, 501 U.S. 722, 752 (1991); *Anderson v. Heinze*, 258 F.2d 479, 481 (9th Cir. 1958). The Criminal Justice Act, 18 U.S.C. § 3006A authorizes this Court to appoint counsel for a financially eligible person who seeks relief under § 2254 when the "court determines that the

1 interests of justice so require.” *Id.* at § 3006A(a)(2)(B); *see also Chaney v. Lewis*, 801 F.2d 1191,
2 1196 (9th Cir. 1986). Moreover, the *Rules Governing Section 2254 Cases in the United States*
3 *District Courts* require the Court to appoint counsel: (1) when the court has authorized discovery
4 upon a showing of good cause and appointment of counsel is necessary for effective discovery; or
5 (2) when the Court has determined that an evidentiary hearing is warranted. *Id.* at Rs. 6(a) and
6 8(c).

7 Based upon the record, the Court finds Petitioner has not demonstrated that appointment
8 of counsel is necessary at this stage of these proceedings. Petitioner was able to file his habeas
9 petition and his response to the motion to dismiss without the aid of counsel, and the Court finds
10 that the claims raised therein do not appear to be complex. Provided Petitioner meets the criteria
11 set forth in 18 U.S.C. § 3006A, the Court will consider appointing counsel to represent Petitioner
12 if the Court later finds good cause to permit discovery or if the Court decides that an evidentiary
13 hearing is warranted in this matter.

14 Petitioner additionally asks the Court to take judicial notice that (1) Petitioner was
15 appointed an attorney in his parole revocation hearing, and (2) that he was unable to access the
16 law library for several months due to Covid-19 quarantine. (Doc. No. 24). Presumably,
17 Petitioner requests the Court to take judicial notice of these issues to support his motion for
18 appointment of counsel.

19 Federal Rule of Evidence 201 permits a court to take judicial notice of facts that are “not
20 subject to reasonable dispute” because they are either “generally known within the trial court’s
21 territorial jurisdiction,” or they “can be accurately and readily determined from sources whose
22 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). The Court may take judicial
23 notice on its own or at the request of any party. *Id.* 201(c). While the Court may take judicial
24 notice that Petitioner was appointed an attorney in his criminal matter after reviewing the court’s
25 records in that matter, whether Petitioner was quarantined and unable to have access of the library
26 is an issue of fact and not subject to judicial notice. Regardless, as indicated above, Petitioner has
27 not demonstrated that appointment of counsel is warranted, regardless of whether counsel was
28 appointed in a separate matter. Additionally, Petitioner timely filed his opposition to

Respondent's motion to dismiss, which is now ripe for the Court's review. Thus, the Court deems Petitioner's request for judicial notice mooted by the Court's prior ruling.

Accordingly, it is **ORDERED**:

1. Petitioner's Motion for Appointment of Counsel (Doc. No. 23) is **DENIED without prejudice**.
2. Petitioner's Request for Judicial Notice (Doc. No. 24) is **DENIED as moot**.

IT IS SO ORDERED.

Dated: November 15, 2021


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE